HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1620 (S/S) 2005

Balam Singh, S/o Late Sri Jaman Singh,
R/o village Syura, P.O. Hairakhan,
District Nainital. .....Petitioner.

Vs.

1. Chief Engineer, Kumaun Division, P.W.D. Almora.
2. Superintending Engineer, 22nd Circle,
   Public Works Department, Nainital.
3. Executive Engineer, Prantiya Khand,
   Public Works Department, Nainital. ...Respondents.

K.K. Tiwari, learned counsel for the petitioner,
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Vinay Upadhyay and Sri K.K. Tiwari, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this petition, the petitioner has prayed to issue a writ in the nature of mandamus commanding the respondents to regularize the services of the petitioner on Class-IV post on the post of Mate, treating him as confirmed employee appointed under dying in harness rules w.e.f. 29.11.2001 and pay him all consequential benefits forthwith as and from when it becomes due. Petitioner has further prayed for a writ of mandamus commanding the respondents to give admissible pay scale to the petitioner as is being drawn by his other counterparts in the department.

Brief facts of the case are that the late father of the petitioner was initially appointed as Mate in work charge establishment in the Prantiya Khand P.W.D. Nainital for the construction work of P.H.K. Motor Road. The services of his

Khand, Lok Nirman Vibhag, Nainital vide order dated 05.08.1999.

Learned counsel for the petitioner has submitted that the aforesaid regularization order was cancelled by the respondents in pursuance of the directions issued by the Chief Engineer, Kumaun Division, P.W.D., Almora without affording any opportunity of hearing to the employee.

Learned counsel for the petitioner has submitted that against the said cancellation order number of writ petitions have been filed before this Hon'ble Court and Hon'ble Single Bench of this Hon'ble High Court has decided this controversy vide its order and judgment dated 17.09.2003 holding therein that the petitioners shall be treated to be regular in service from the date they were regularized.

The father of the petitioner died on 25.06.2001 while in service of the respondents. After the death of his father, the petitioner represented before the authorities concerned for his appointment under dying in harness rules and accordingly vide order dated 29.11.2002, respondent no. 3 appointed the petitioner on the post of Mate on temporary basis under dying in harness rules and the petitioner joined his duties on the post of Mate.

The petitioner has submitted that the petitioner has made several representations to the authorities concerned to regularize his service, since he was appointed under dying in harness rules, therefore, there is no question of appointing him on temporary basis. But despite this, the petitioner's services were not regularized.

Learned counsel for the petitioner has submitted that in a catena of decisions passed by this court as well as Hon'ble Allahabad High Court, it has categorically been held that appointments made under rules on compassionate grounds can

never be treated either ad hoc or temporary appointment. The appointment letter indicates that the petitioner was appointed under Dying-in-Harness Rules on the post of Mate from the date he joins the post. On several occasions, the petitioner requested the authorities to provide her appointment on monthly salary basis however, the Department did not consider her request consequently; she filed the present writ petition.

On 29.10.2004, this Court granted four week's time to learned Standing Counsel to file counter affidavit, but no counter affidavit was filed by the Department.

It is not disputed that the petitioner's father was working with the respondents on monthly salary basis from the date of his appointment till his death i.e. till 25.06.2001. It is also not disputed that the petitioner was given appointment under Dying-in-Harness Rules on the post of Mate on temporary basis. This fact is also apparent from the appointment letter, which is annexed along with the writ petition. Contention of the petitioner is that since the petitioner was provided appointment under Dying-in-Harness Rules, his appointment cannot be treated similar to those appointed as Daily Wage basis. The petitioner has placed reliance on the judgment of this Court in Writ Petition no. 91(s/s)2003 reported in 2005(1) Uttaranchal Decisions, page 379 ***Bhaguli Devi vs. State of Uttaranchal and others.*** She has further placed reliance on the judgment of Allahabad High Court in Civil Misc. Writ Petition no. 39127 of 1994 Ravi Karan Singh vs. State of U.P. and others reported in 1999(3) UPLBEC, page 2263 wherein the Division Bench has held that the appointment provided under Dying-in-Harness Rules shall be treated as permanent appointment and not a temporary appointment.

In absence of counter affidavit, learned Standing Counsel could not show any reason as to why the petitioner was

appointed on temporary basis despite the fact that he was appointed under Dying-in-Harness Rules. I find force in the submissions of the learned counsel for the petitioner that since the petitioner was appointed under Dying-in-Harness Rules, his appointment should have been treated on regular basis and not on temporary basis.

In the circumstances and for the reasons stated above, the writ petition is allowed. The respondents are directed to treat the services of the petitioner as permanent appointment and not the temporary one. No order as to costs.

(Rajesh Tandon, J.)

21st December, 2005:
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